

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRUCE H. PEARSON,

Case No. 1:07-CV-509

Plaintiff,

Hon. Richard Alan Enslen

v.

COMMISSIONER OF
SOCIAL SECURITY,

JUDGMENT

Defendant.

This matter is before the Court on Plaintiff Bruce H. Pearson's Objection to United States Magistrate Judge Ellen S. Carmody's Report and Recommendation of May 19, 2008, which affirmed Defendant Commissioner of Social Security's decision denying Plaintiff's claim for Disability Insurance Benefits.¹ This Court reviews the decision of the Commissioner to determine whether it is supported by substantial evidence. 42 U.S.C. § 405(g); *Heston v. Comm'r of Soc. Sec.*, 245 F.3d 528, 534 (6th Cir. 2001). Upon review of the Objection and the record, the Court concludes that the Commissioner's decision should be affirmed.

Plaintiff's Objection concerns the Report's conclusion that he does not suffer from mental retardation as defined in Section 12.05 of the Listing of Impairments in the Social Security Regulations. *See* 20 C.F.R., Part 404, Subpart P, App. 1, § 12.05. Plaintiff argues the Magistrate Judge failed to consider Exhibit 1F, which confirms that Plaintiff was in special education classes in high school and lends credence to Plaintiff's claim that he experienced deficiencies in adaptive

¹Although the Report found "there does not exist substantial evidence to support the ALJ's conclusion that Plaintiff retains the ability to perform his past relevant work," it was correctly noted that "[t]his shortcoming, however, does not alter the outcome." (Report 13.)

behavior prior to the age of 22. *See Foster v. Halter*, 279 F.3d 348, 355 (6th Cir. 2001) (holding that a claimant satisfies Section 12.05 when he demonstrates, *inter alia*, that he experienced deficiencies in adaptive functioning prior to the age of 22.)

Although said high school records were not specifically discussed in the Report, they were referenced in the ALJ's decision. (*See* ALJ's Op. 19.) Moreover, the Court is not convinced that the Magistrate Judge failed to consider the evidence. The Report correctly concluded that Plaintiff's lengthy and successful work history demonstrates that he has not met the requirements of Section 12.05. *Cf. Freeman v. Apfel*, 208 F.3d 687, 692 (8th Cir. 2000) (finding that a claimant with a tenth grade education who worked as an oil changer was not disabled under Section 12.05); *Williams v. Sullivan*, 970 F.2d 1178, 1185 (3rd Cir. 1992) (finding that a claimant was not mentally retarded as defined in Section 12.05 because he was able to maintain a job most of his adult life). Accordingly, the Court finds that substantial evidence supports the ALJ's decision for the reasons given in the Report.

THEREFORE, IT IS HEREBY ORDERED that Plaintiff Bruce H. Pearson's Objections (Dkt. No. 10) are **DENIED**, the Report and Recommendation (Dkt. No. 9) is **ADOPTED**, and the decision of the Commissioner of Social Security is **AFFIRMED**.

DATED in Kalamazoo, MI:
June 2, 2008

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE